

No. 10335

In The
United States
Circuit Court of Appeals
For the Ninth Circuit 9

DENZEL RIDER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLANT

UPON APPEAL FROM THE DISTRICT COURT
OF THE UNITED STATES FOR THE
DISTRICT OF ARIZONA

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STATEMENT OF THE CASE

Appellant was indicted, tried, and convicted for a violation of Sections 510 and 714, Title 38, U. S. C. A., in that she unlawfully received a widow's pension as the unremarried widow of a World War Veteran with the intent to defraud the United States.

The facts developed at the trial, briefly stated, show that appellant married one Arthur C. Rider, a World War Veteran, at Anderson, Indiana, on April 3, 1920. One child, Vaughn Rider, was born to this union, and thereafter, on July 14, 1922, Arthur C. Rider died (Tr. 45). Appellant was then awarded a widow's pension by the Government in

the sum of approximately \$30.00 per month pursuant to Sections 503 and 504, Title 38, U. S. C. A. The amount of the pension varied from time to time through amendments to the original pension act, but, whatever the amount, appellant continued to receive the pension to and including the month of November, 1940 (Tr. 45, 46).

In 1931 she removed with her son to Phoenix, Arizona (Tr. 46), and on July 16, 1942, she was indicted in six counts for receiving and cashing six monthly pension checks for the months of June, July, August, September, October and November, 1940, as the unremarried widow of Arthur C. Rider, with the intent to defraud the United States (Tr. 2). At the trial the Government established that on June 14, 1939, at Nogales, Arizona, appellant married one George V. Lane, and that at the time she received, endorsed, and cashed the six monthly pension checks in 1940, she was not the unremarried widow of Arthur C. Rider. Her receipt and retention of the pension checks, the Government claims, was done with the intent on her part to defraud the United States. This was the sole issue involved.

On this issue appellant offered to testify, and to corroborate her testimony by documentary evidence and the testimony of other persons, that she fully believed, because of the circumstances leading to and surrounding her marriage to Lane, such marriage was void, and at the time she received, endorsed, and cashed the six pension checks mentioned in the indictment, she was lawfully entitled to them. The circumstances of her marriage to Lane and the relevant events immediately prior and subsequent thereto are set forth in detail in her Offer

of Affirmative Proof and need not be repeated here (Tr. 51-55). Her proof was directed solely to the issue of criminal intent and was intended to negative the allegations of the indictment that in accepting and retaining the pension checks she did so with intent to defraud the United States (Tr. 55).

Objection to the Offer of Proof was sustained by the court on the ground it was self serving (Tr. 51). The case was then submitted to the jury on the Government's evidence alone, and the jury returned a verdict of guilty on each count of the indictment (Tr. 12-13).

This appeal challenges the ruling of the trial court in denying appellant the right to submit the facts disclosed in her Offer of Proof to the jury on the grounds that such evidence was material and relevant on the issue of her intent, motive, and state of mind in accepting and retaining the six pension checks in question.

SPECIFICATIONS OF ERROR

Appellant relies upon the Assignments of Error set forth below under the appropriate specification to which they relate. The sole Specification of Error and the sole question raised by the Assignments of Error are:

SPECIFICATION OF ERROR I.

Did the Court err in rejecting the evidence of appellant contained in her Offer of Affirmative Proof (Tr. 51-55), and in refusing to permit her to testify in her own defense that she believed, when ac-

cepting and retaining the six monthly pension checks charged in the indictment, she was acting lawfully and within her rights? (Assignments of Error I, II, III and IV, Tr. 22-29).

ARGUMENT

SPECIFICATION OF ERROR I.

The argument will be directed to the Fourth Assignment of Error only, as the subject of the first three assignments are likewise a part of the fourth assignment and all are supported by the same proposition of law.

At the outset, we offer as a general proposition of law, that, whenever a statute makes a specific intent an element of the crime defined in the statute, as in the instant case, or whenever the intent of the accused in doing the acts charged in the indictment becomes material, such intent is the gravamen of the offense, and direct testimony by the accused of the want of any evil intent, motive, or state of mind, and the grounds therefor, is material and relevant.

The Government's evidence in this case, in the absence of any showing by the appellant, is unquestionably sufficient to support the verdict of the jury. Appellant does not dispute the ultimate fact of her marriage to George V. Lane, or of her receipt and retention thereafter of the six pension checks charged in the indictment. Her whole defense, as disclosed by her Offer of Affirmative Proof (Tr. 51-55), is predicated on her belief that her marriage to Lane was void and, in any event, did not affect her right

to these checks. In short, she admits every act attributed to her, but denies that such acts were induced by any design to defraud the United States or any other person, or to violate any law.

Sections 510 and 714, Title 38, U. S. C. A., under which the indictment in this case is laid, provides:

(Sec. 510). "The penal and forfeiture provisions relating to pensions and compensation contained in sections 701-703, 704, 705, 706, 707-715, 716-721 of this title shall be applicable to claims for compensation under sections 34, 101-104, 131-134, 424a, 445d, 472a, 472b, 472d, 472e, 503-505, 506, 507, 507a and 512c of this title. (Aug. 16, 1937, Ch. 659, Sec. 9, 50 Stat. 662)."

(Sec. 714). "Whoever shall obtain or receive any money, check, or pension under sections 701-703, 704, 705, 706, 707-715, 716-721 of this title, and sections 30a, 485 of Title 5 or regulations issued thereunder, without being entitled to the same, and with intent to defraud the United States or any beneficiary of the United States, shall be punished by a fine of not more than \$2,000, or by imprisonment for not more than one year, or both. (Mar. 20, 1933, Ch. 3, Title 1, Sec. 14, 48 Stat. 10)."

Manifestly, the gravamen of the offense denounced by these sections is the corrupt intent. In this, the offense differs from those crimes which become such merely by the deliberate performance of the act prohibited, as in bigamy, and the intent, motive, or state of mind of the accused at the time of the commission of the alleged offense becomes the determin-

ing factor. Proof of the criminal intent in this case, therefore, becomes as important and necessary to the prosecution as that of any other element. Such proof, of course, may consist of direct or circumstantial evidence, but the fact that intent is more often established by circumstances and conditions surrounding the commission of an offense does not preclude direct evidence on that issue. This is particularly true of the evidence of the accused.

On this point *Wharton's Criminal Evidence* (11th Ed.) Vol. 3, page 423, states:

“With the exception of one state, the rule is universal that, on a prosecution for a crime, whenever the intent of the accused is relevant to the issue or whenever the intent of the accused in doing the act charged becomes material, the accused may testify as to his own motive and intent, or state of mind.”

Such testimony is not limited to a bare denial of the criminal intent by the accused, for such denial, unsupported by the facts and circumstances which induced the belief in the accused of his right to do the act condemned, would oftentimes be unintelligible and meaningless to the jury. Such would be the fact in the instant case. Were appellant, here, confined to a bare denial of improper motive or intent in receiving and retaining the pension checks charged in the indictment, without the benefit of the facts of the attempted fraud on her, which induced the belief in her that in receiving and retaining the checks she was acting lawfully, it would avail her nothing by way of defense. Recognizing the futility of such restriction, the courts have held, with singu-

lar unanimity, that evidence by the accused, touching his intent, motive, or state of mind at the time of the commission of an alleged offense, may extend to the grounds which induced the belief of the lawfulness of his act, and may include heresay evidence.

In *Potter v. United States*, 155 U. S. 438, 15 Sup. Ct. 144, 39 L. Ed. 214, the Supreme Court, in holding that the word "wilful" is synonymous with intent, said:

(p. 448). "As 'wilful' wrong is of the essence of the accusation, testimony bearing directly on the question of the wilfulness is of vital importance, and error in rejecting it cannot be regarded otherwise than as material and manifestly prejudicial."

To the same effect is a holding of the Appellate Court of the Eighth Circuit in *Buchanan v. United States*, 233 Fed. 257, 259:

"Whenever the belief of a person, or the motive or intent of his act or conduct, is material, he may testify directly what it was. Wigmore on Ev., Sec. 581. He may also give the grounds of the belief upon which his motive or intent proceeded, including the statements of third persons to him. Id. Secs. 245, 655, 1789."

The same rule is announced by the Fourth Circuit in *Hyde v. United States*, 15 Fed. (2) 816, 821:

"The crucial question in the case is whether or not there was an intent on the part of the

actors to deceive and defraud the officials of the Government or to misappropriate funds of the bank. The bona fides, the intent, purpose, and motive, of what was done constituted the vital and important element of the entire transaction, and therefore anything that took away from the consideration of the jury facts that might explain motives and purposes of the actors was a necessary and important matter in determining the character of the transaction, and its legality or illegality, and the guilt or innocence of the accused."

That this rule of evidence is applicable to both the prosecution and the defendant, see the decision by the Seventh Circuit in *Norcott v. United States*, 65 Fed. (2) 913, 919:

"The intention of the appellants is a most vital element in this cause For this reason circumstantial evidence, as in other cases, must play an important part in the determination of that fact, and all circumstances which reasonably throw light upon that subject, either directly or indirectly, should be received in evidence on behalf of both the government and those charged with crime. (Cert. denied, 290 U. S. 694, 54 S. Ct. 130, 78 L. Ed. 597)."

For additional authorities on this question, see *Wallace v. United States*, 162 U. S. 466, 477, 16 S. Ct. 859; *Crawford v. United States*, 212 U. S. 183, 29 S. Ct. 260, 53 L. Ed. 465; *Miller v. United States*, 120 Fed. (2) 968.

The foregoing decisions and the rule of evidence

they announce are unquestionably applicable to the facts presented by the record in this case. The statute (Sections 510 and 714, supra) denounces the receipt and retention of pension checks under circumstances similar to those in the present case only when done with the intent to defraud the United States or any beneficiary of the United States; hence, appellant may have been guilty of all of the acts charged against her, but, in the performance of those acts, if she was not prompted or actuated by an improper motive or intent, she committed no crime. Her intent, therefore, determines her guilt or innocence. On that vital issue the jury were entitled to all the enlightenment possible, as it remained with them to correctly appraise her intent and motive. By the ruling of the trial court they were compelled to rest their determination of that issue on the evidence of the Government alone.

The reasonableness or logic of the facts disclosed in the appellant's Offer of Proof, their probability or improbability, the effect that they might have produced on the mind of another person, are matters with which we are not here concerned. It is sufficient if these facts produced such mental condition in appellant she could truthfully say that she honestly believed she was entitled to the checks and that in accepting and retaining them she did so under such belief, and not through design to perpetrate a fraud upon the revenues of the Government. The effect and weight of such evidence was for the jury's determination. Her right to submit that evidence for the jury's consideration is unques-

tioned, and the ruling of the trial court denying her that right is, we believe, prejudicial error.

Respectfully submitted,

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